

APPEAL NO. 031931
FILED SEPTEMBER 10, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 9, 2003, with the record closing on February 13, 2003. On the sole issue, the hearing officer determined that the respondent's (claimant) impairment rating (IR) was 47%, as certified by the designated doctor appointed by the Texas Workers' Compensation Commission. In Texas Workers' Compensation Commission Appeal No. 030622, decided April 30, 2003, we remanded for the designated doctor to further explain the basis of his IR with regard to the claimant's psychiatric disorder. On remand, the hearing officer determined that the claimant's IR was 21% as certified in the designated doctor's response to the request for clarification. The appellant (carrier) appeals, asserting that the designated doctor's IR certification is contrary to the great weight of other medical evidence. The claimant urges affirmance.

DECISION

Affirmed.

The pertinent facts are set forth in Appeal No. 030622 and will not be repeated here. On remand, the hearing officer requested clarification of the designated doctor's report consistent with our earlier decision. The designated doctor responded:

I think that after reviewing the records that the claimant should qualify for Class 2 mental and behavioral, an impairment rating that is compatible with most useful functioning. I think that the claimant is affected by his depression and it continues to interfere with his daily functioning. Therefore, after careful reconsideration, the impairment for the mental and behavioral disorders is more appropriately represented at 10% for a permanent impairment. This amends the whole person impairment rating to 21%.

The hearing officer adopted the designated doctor's amended IR certification as "more consistent with Table 1, page 233 of the [Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides)] than the previous 40% rating," given the designated doctor's explanation regarding the assigned psychological impairment.

The carrier reasserts that the hearing officer erred in giving presumptive weight to the designated doctor's report because the claimant's depression is not a permanent condition and, therefore, not ratable under the AMA Guides. We addressed this argument previously in Appeal No. 030622, and decline to reconsider it on remand.

The carrier also argues that the designated doctor's reduced impairment rating, attributable to the claimant's psychological condition, continues to be arbitrary and not supported by the medical evidence. We note that the carrier does not dispute that the claimant sustained a compensable psychological injury or that he was treated for such injury; rather, the carrier appears to argue that the claimant's IR for mental and behavioral disorders is out of proportion to the claimant's actual condition on the date of maximum medical improvement and is against the great weight of the contrary medical evidence. As indicated in our prior decision, the carrier's required medical examination doctor, Dr. S, assigned the claimant an 11% impairment rating, including 3% for a Class 2 psychiatric disorder under Table 1, page 233 of the AMA Guides.¹ In his response to clarification, the designated doctor, likewise, assigns the claimant a rating for a Class 2 psychiatric disorder under Table 1, page 233 of the AMA Guides, albeit a higher rating of 10%. In view of the evidence, we cannot conclude that the hearing officer could not accept the designated doctor's amended IR certification or that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

¹ While Dr. S testified that the claimant's psychological condition was not permanent and should not be rated, he makes clear in his original report that a 3% rating under Table 1, Class 2, page 233 of the AMA Guides is reasonable, should a rating be deemed appropriate.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge